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CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTION OF: FREEDOM OF EXPRESSION

Written statement submitted by the International Federation of Human Rights, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement, which is circulated in accordance with Economic and Social Council resolution 1996/31.

[11 January 1999]

GE.99-10528 (E)

1. The International Federation of Human Rights (FIDH), and its parteners, the Council for Human Rights and the Belgrade Centre for Human Rights are deeply concerned by the widespread violations of the freedom of expression, the press and opinion in the territory of the Federal Republic of Yugoslavia (FRY).

1. General

2. Provisions on the freedom of expression in Yugoslav constitutions appear to be generally in accordance with international standards. All constitutions of the FRY guarantee the freedom of public expression of opinion. However, unlike international instruments, the freedom of the press and other mass media in FRY is covered by separate provisions in all three constitutions. The FRY Constitution prohibits censorship and indicates the circumstances under which the media can be restrained. The constitutions also do not follow international treaties in their entirety and do not refer to the freedom to seek and receive information regardless of borders and the medium of transmission. This gap is strongly felt in practice, especially by journalists who are faced with arbitrary refusal of information and access to events.

2. New Limitations of the Freedom of Expression in Serbia - the 1998 Legislation on the Media

"The Decree on Special Measures in the Situation of Threats to our Country of NATO Armed Attacks" 1/

3. At the beginning of October 1998 the crisis involving possible NATO armed attacks against targets in Serbia and Yugoslavia was at its peak. The Serbian Government orally forbade the electronic media to retransmit the broadcasts in Serbian of some foreign radio and television stations (Voice of America, Radio Free Europe, Deutsche Welle, BBC and France International); they also announced a corresponding "formal decision of the Government".

4. Thereupon, the Official Gazette of Serbia published on 8 October 1998 a decree which obliged the media "to act in accordance with the rights and duties of citizens to protect territorial integrity, sovereignty and independence of the Republic of Serbia and the Federal Republic of Yugoslavia" (art. 7). It also prohibited "rebroadcasting of parts of programmes, i.e. programmes and texts of foreign media, which act against the interests of our country, spread fear, panic and defeatism, or negatively affect the readiness of citizens to protect the integrity of the Republic of Serbia and the Federal Republic of Yugoslavia". The decree further forbade the media "to spread defeatism and act contrary to the resolutions of the Federal Assembly and the Peoples' Assembly of the Republic of Serbia" and instructed them "to use their programmatic content to oppose such activity of other means of public information". The decree prescribed sanctions for the violations of its provisions: they amounted to temporary suspension of work and confiscation of equipment. Sanctions were to be imposed by the Ministry of Information, and not by a court, as provided by the Constitution of Serbia.

The New Public Information Act of the Republic of Serbia

5. On 20 October 1998, the Peoples' Assembly of Serbia adopted a new Public Information Act. 2/

6. Three groups of provisions of the Act have caused major concern to commentators and representatives of the media. Their objections are related to administrative proceedings against the media, misdemeanours and their punishment, and the prohibition of rebroadcasting.

7. Administrative proceedings against the media, prescribed by the new Act, have been compared to summary trials. Magistrates have only 48 hours at their disposal to decide on the guilt and liability of the media and of the responsible editors. After receiving a complaint, the magistrate must set a hearing within 24 hours and announce a decision within the next 24 hours. In the proceedings, which are criminal in nature, there is a presumption of the guilt of the accused, who is not allowed to prove the veracity of the statements he or she has published. If the magistrate imposes a fine, the convicted person is left only 24 hours to pay - after that the property of the convicted medium or the responsible person will be impounded. This property will be auctioned within seven days.

8. The scope of sentences available to the magistrate under the new Act has also given rise to serious concerns. The seminal Misdemeanours Act provides for maximum and minimum sanctions for petty offences; however, the new Act prescribes fines which exceed the maximum limit by more than 400 times.

9. The ban on rebroadcasting of foreign programmes "with a political-propagandistic content" was transferred to the Public Information Act (art. 27) from the Decree which preceded it.

3. The establishment and operation of electronic media

10. The greatest difficulties with the implementation of the freedom of expression and information in Yugoslavia and Serbia have occurred in the work of electronic media. Provisions on the establishment, beginning of operation and activity of electronic media are dispersed in many federal and republican acts and regulations. They are often incoherent or controversial and have created a situation where it is practically impossible legally to establish and manage a private radio or television station. It should be noted that provisions on the operation of electronic media in FRY, and in particular in Serbia, grant large privileges to the State electronic media (public enterprises for radio diffusion); the latter practically have a free hand in using frequencies. On the other hand, Montenegrin legislation is much better adapted to international standards.

11. Under the existing provisions at various levels it has been practically impossible for private persons to establish electronic media. This barrier is of a legal nature. Under such circumstances, the freedom to receive and impart information and ideas of all kinds has been restricted in Yugoslavia on grounds not referred to in article 19.3 of the International Covenant on Civil and Political Rights.

4. Relevant Criminal Legislation

12. The nature of the restrictions imposed in Yugoslavia on freedom of expression and information can be best observed by perusal of the Criminal Code of Serbia, which in many respects departs from international standards and facilitates criminal prosecution and intimidation of journalists and the media. Some offences are described in such a way as to include exculpation if the act was committed in the exercise of the profession of a journalist.

13. A particularly restrictive clause is found in the description of the offence of "circulating false information", contained in the Serbian Criminal Code (art. 218, para. 1):

> "A person making public or reproducing false information or statements with the intention to cause malaise or disquietude among citizens or to endanger public order or peace, or with the intention to obstruct the execution of decisions and measures of state organs or agencies or to diminish the confidence of citizens in such decisions and measures will be punished by imprisonment of a maximum of three years."

Thus formulated, the criminal offence of circulating false information offers a wide opportunity to the authorities to prosecute anyone who utters statements which they find objectionable.

14. Stipulating that circulation of false information is punishable if there is an intention "to cause malaise or disquietude among citizens" is very general and vague. Bearing in mind that Yugoslav courts in such cases will not apply the principle of proportionality, this formulation is not consistent with the international obligations of FRY.

15. The offence of circulating false information "with the intention to obstruct the execution of decisions and measures of state organs or agencies or to diminish the confidence of citizens in such decisions and measures" is defined in such a manner as to facilitate the prosecution of political opponents. In Yugoslav law, especially because of the absence of the principle of proportionality, there is no guarantee that such a broad wording will not be used to suppress opinions found unacceptable by the authorities and to restrain political debate.

16. The definition in the Serbian Criminal Code of the offence of "illegal possession and operation of a radio station" deserves to be quoted:

> "A person possessing a radio station in violation of the provisions on the system of communications or operating such a station without permission, will be punished by imprisonment for up to one year. An offender under paragraph 1 of this article, making public or circulating false information or statements which have led or could have led to the disquietude of citizens or to a threat to public order or peace, will be punished by three months to three years of imprisonment.

"If the criminal offence contains the features of the offence described in article 218 of this Code, or if it resulted in present disquietude of citizens or threat to public order and peace in a wider area, the perpetrator will be punished by one to eight years of imprisonment."

This is a very severe incrimination in view of the legal impossibility of obtaining permission to own and operate a radio station (see paras. 10 and 11 above.

Notes

1/ Slu beni glasnik Republike Srbije, 8 October 1998.

2/ Slu beni glasnik Republike Srbije, 36/1998.